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QUESTION PRESENTED

Whether the contents of a brief case, which petitioner had dropped on the street after seeing a police officer and which he said to the officer did not belong to him, were properly admitted in evidence.

STATEMENT

Petitioner was indicted in the District Court for the District of Columbia for carrying on a lottery and having receipts and other papers used in a lottery, in violation of 22 D.C. Code 1501 and 1502 (R. 1). He moved for the suppression of all evidence which he alleged was seized from him on the day he was arrested. This motion was denied (R. 2). Having waived his right to a trial by jury (R. 2–3), petitioner was convicted on both counts by the trial judge and sentenced to concurrent terms of imprisonment of 4 to 12 months on count one and one year on count two (R. 14). After briefing and oral argument, the court of appeals dismissed as frivolous petitioner's appeal claiming that illegally obtained evidence was introduced at his trial (R. 19–20).

The pertinent facts concerning the seizure of the evidence are as follows:

About 2:35 p.m. on December 11, 1961, Deputy Chief Thomas Layton saw petitioner, a person whom he knew to be a frequent violator of the gambling laws of the District of Columbia, leaving a cab in the 700 block of 12th Street, N.W., Washington, D.C. Petitioner was accompanied by a person who was unknown to Chief Layton and was carrying a large brown briefcase. Petitioner and Chief Layton passed

close to each other and at this point petitioner saw Chief Layton (R. 5). When Layton looked back at petitioner, he noted that petitioner stood between the shop windows of a book store and was no longer carrying the briefcase. The officer saw the briefcase on the sidewalk within a few feet of petitioner (R. 5–6). The officer approached petitioner and after greeting him asked what he was carrying. Petitioner patted his pockets and said that he was not carrying anything. Asked whether he had not just carried the briefcase which was now on the sidewalk, petitioner said that he knew nothing about it (R. 6–7). When asked if he had any idea as to its contents, he said "no" (R. 7). The officer remarked that it was careless to leave something like that around and that it might contain something of value. Petitioner said that he had no idea of its contents and asked "why don't you examine it" (R. 7–8). The officer did so, and found money, lottery slips, and numbers paraphernalia in it. At this point he arrested petitioner on the lottery charges. The contents of the briefcase were introduced in evidence against petitioner.

ARGUMENT

The courts below properly found no merit in petitioner's attack on the admissibility of the contents of the briefcase. Petitioner left his briefcase on the sidewalk and moved away from it before the police officer took any action whatsoever. After seeing petitioner, first with the briefcase in his hands and then without it, and noticing the briefcase a few feet away

on the sidewalk, the officer had good reason to make inquiry of petitioner. Such an inquiry by a police officer on the street is not an arrest. *Green* v. *United States,* 259 F. 2d 180, 181 (C.A. D.C.), certiorari denied, 359 U.S. 917; see *Weathersbee* v. *United States,* 62 F. 2d 822 (C.A. 5), certiorari denied, 289 U.S. 737; *Poulas* v. *United States,* 95 F. 2d 412, 413 (C.A. 9). Neither *Henry* v. *United States,* 361 U.S. 98, nor *Rios* v. *United States,* 364 U.S. 253, on which petitioner relies hold to the contrary. In *Henry* the government, having conceded below that the stopping of the vehicle amounted to an arrest, did not argue the point and the Court limited its decision to the facts of the particular case. 361 U.S. at 103. In *Rios,* "the Government argue[d] that the policemen approached the standing taxi only for the purpose of routine interrogation," and that this did not constitute an arrest. 364 U.S. at 262. The Court sent the case back for a determination as to precisely when the officer had made the arrest. The decision thus impliedly holds that the mere approach of the officer to make an inquiry does not in itself constitute an arrest.

After petitioner denied ownership of the briefcase or knowledge of its contents, the police had the right to consider it as abandoned property and examine it, regardless of any consent by petitioner. See *Hester* v. *United States,* 265 U.S. 57; *Haerr* v. *United States,* 240 F. 2d 533, 535 (C.A. 5); *Lee* v. *United States,* 221 F. 2d 29, 30 (C.A. D.C.). In any event, petitioner

consented to the search of the briefcase. Indeed, he went further and suggested to the officer that he examine the contents of the briefcase. This statement, made in the open street, when no move had been made to arrest petitioner, cannot be equated to the situation in the cases relied upon by petitioner in which courts have ruled involuntary a consent to search a home given after arrest (*Judd* v. *United States,* 190 F. 2d 649 (C.A. D.C.)), or where a defendant could reasonably consider himself arrested (*Higgins* v. *United States,* 209 F. 2d 819 (C.A. D.C.)).[1]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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[1] In *Work* v. *United States*, 243 F. 2d 660 (C.A. D.C.), on which petitioner also relies, the defendant hid narcotics in a trash can immediately outside her house after officers had illegally entered the house. She made no statement even suggesting that she consented to the search. The court of appeals held that the narcotics had been hidden, not abandoned. Here, in contrast, the police officer had taken no action at all when petitioner left his briefcase on the sidewalk. His subsequent inquiry was, as we have seen, entirely legal and petitioner himself suggested that the search of the briefcase be made.

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